



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2013 Assembly Bill 181**

**Senate Amendment 1**

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2013 Assembly Bill 181, as passed by the Assembly, creates a fund-of-funds venture capital investment program to facilitate investments in venture capital funds, which, in turn, must invest in Wisconsin businesses. The bill also appropriates \$25 million for the program.

### **ASSEMBLY BILL 181, AS AMENDED BY THE ASSEMBLY**

Assembly Bill 181 requires the Department of Administration (DOA) to contract with an investment manager to manage investments in venture capital funds. The bill requires that the investment manager be selected by a committee composed of three members of the State of Wisconsin Investment Board (SWIB), one representative of DOA, appointed by the DOA Secretary, and one representative of the Wisconsin Technology Council, appointed by the Wisconsin Technology Council's Board of Directors. The contract between the investment manager and DOA must contain certain conditions and is subject to review by the Legislative Audit Bureau and must be submitted to the Joint Committee on Finance for a 14-day passive review.

Under the bill, DOA must pay \$25 million to the investment manager for investments in venture capital funds. The investment manager must then contribute to those investments \$300,000 of its own capital and \$5 million raised from other funding sources. In addition, the investment manager must ensure that, on average, a venture capital fund invests \$2 in a business for every \$1 the investment manager contributes to the investment in that business.

Each venture capital fund that receives capital under the program must invest all of the capital received in businesses that are headquartered in Wisconsin and employ at least 50% of their full-time employees in Wisconsin. At least one-half of the capital each venture capital fund receives under the program must be invested in one or more businesses that employ fewer than 150 full-time employees at the time of the initial investment. Each venture capital fund must invest all of the capital it receives under the program in businesses in the agriculture, information technology, engineered products, advanced manufacturing, medical devices, or medical imaging industry and attempt to ensure that all of

those moneys are invested in businesses that are diverse with respect to geographic location within this state.

The investment manager must hold in an escrow account its gross proceeds from all investments of capital contributed to the program by DOA. The investment manager must pay, at least annually, the amount in that account to the state for deposit into the general fund. These requirements are only in effect until the investment manager has paid a total of \$25 million to the state, the amount of DOA's contribution. After that point, the investment manager must pay 90% of its gross proceeds from such investments to the Secretary of Administration for deposit into the general fund.

The bill creates several reporting requirements. The investment manager must submit a report to DOA each year within 120 days after the end of the investment manager's fiscal year, which DOA must submit to the Legislature within 10 days of receiving it. In addition, the bill requires the investment manager to submit quarterly reports to DOA. DOA must make the quarterly reports readily accessible to the public on the department's website. It also requires DOA to submit two progress reports to the Joint Committee on Finance, one in 2015 and one in 2018.

### **SENATE AMENDMENT 1**

Under *Assembly Bill 181*, the investment manager selection committee must be composed of three members of SWIB, one representative of DOA, appointed by the DOA Secretary, and one representative of the Wisconsin Technology Council, appointed by the Wisconsin Technology Council's Board of Directors.

*Senate Amendment 1* requires that the investment manager selection committee be composed of three members of SWIB and two representatives of the capital finance office of DOA, appointed by the DOA Secretary.

### **ASSEMBLY ACTION**

The amendments described below modify the bill, as introduced in the Assembly.

### **Assembly Substitute Amendment 1**

*Assembly Substitute Amendment 1* was passed by the Assembly and is described earlier in the section "Assembly Bill 181, as Amended by the Assembly." The substitute amendment retains many provisions from the bill. However, under the substitute amendment, DOA, rather than the Wisconsin Economic Development Corporation (WEDC), is responsible for implementing the venture capital investment program. The substitute amendment also appropriates funds for the program, whereas the bill does not directly appropriate funds. In addition, the substitute amendment modifies the composition of a selection committee formed to select an investment manager for the program. Finally, with a few changes, the substitute amendment generally incorporates the changes made by Assembly Amendments

1 and 4 to the bill, both of which were recommended for adoption by the Assembly Committee on Jobs, Economy, and Mining on May 10, 2013,<sup>1</sup> and are described below.

### **Assembly Amendment 1**

Assembly Amendment 1 makes various changes to the bill. Each of the changes is described below.

#### ***Investment Manager's Management Fee***

*The bill* directs WEDC to enter into a contract with an investment manager, who must be selected by a committee comprised of representatives SWIB and WEDC. The bill requires the contract with the investment manager to establish the investment manager's compensation, including any management fee.

Under the bill, the investment manager's management fee may not exceed \$250,000 annually. In addition, the investment manager's total compensation under the contract may not exceed \$800,000.

*Assembly Amendment 1* replaces the dollar-based limitations on the investment manager's management fee with a limitation based on the percentage of specified program funds. Specifically, under the amendment, the investment manager's fee may not exceed 1% of the total amount of the following program funds:

- The \$25 million payment from WEDC.
- The capital raised by the investment manager from sources other than WEDC.

In addition, the amendment provides that the investment manager may receive a management fee for no more than four years.

#### ***Timeline for Commitment of Funds by the Investment Manager***

*The bill* requires the investment manager to *attempt to invest* the \$25 million provided by WEDC and the funds required to be raised and provided by the investment manager according to the following timeline:

- At least one-half of the funds within 12 months after the contract between WEDC and the investment manager is executed.
- All of the funds within 24 months of the date that the contract is executed.

*Assembly Amendment 1* retains that timeline but requires that the investment manager *must commit* the program capital to investments according to that timeline.

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<sup>1</sup> Assembly Amendment 3, which is also described in the Amendment Memorandum, is not relevant under the substitute amendment, because the substitute amendment directs DOA, rather than WEDC, to implement the venture capital investment program.

### ***Timeline for Commitment of Funds by Venture Capital Funds***

**The bill** requires each participating venture capital fund to invest at least one-half of the capital it receives through the program in businesses within 24 months after the date it receives those funds. The bill also requires each fund to invest all of the program capital it receives within 48 months after the date it receives the capital.

**Assembly Amendment 1** retains the 24-month and 48-month investment timeline but replaces the requirement that each fund must *invest* the capital it receives according to that timeline with a requirement that each fund must *commit to investments* according to the timeline.

### ***Investments of Funds in Wisconsin Businesses***

**The bill** requires the investment manager to negotiate contracts with venture capital investment funds. Among other requirements, each contract with an investment fund must require the fund to invest all of the program capital the fund receives through the program in one or more businesses headquartered in Wisconsin.

**Assembly Amendment 1** replaces the phrase “invest all of” in that requirement with the phrase “make new investments in an amount equal to.” Thus, the amendment specifies that a fund must use all capital received through the venture capital program created under the bill to make new investments in Wisconsin businesses.

### ***Recoupment of Funds from Businesses that Leave the State***

**The bill** provides for the recoupment of funds from businesses that relocate outside of Wisconsin. Specifically, if a business that receives an investment under the bill relocates its headquarters outside of the state or fails to employ at least 50% of its full-time employees in the state within three years after a venture capital fund makes an investment in the business, the venture capital fund that made the investment in the business must recover the amount invested from the business.

**Assembly Amendment 1** provides similar terms for the recoupment of funds but provides that the recoupment be included as a requirement of the contract negotiated between a venture capital fund and a business under the bill. Specifically, the amendment requires that a venture capital fund’s contract with a business must require the business to promptly pay an amount equal to the funds that had been invested if the business relocates its headquarters or fails to employ at least 50% of its full-time employees in the state within three years.

### ***Requirement for Funds from Other Sources***

**The bill** requires the investment manager to attempt to ensure that, on average, for every \$1 a venture capital fund receives through the program and invests in a business, the venture capital fund must invest \$2 in that business from sources other than the program. **Assembly Amendment 1** removes the phrase “attempt to” from that requirement.

### ***Reporting Requirements***

**The bill** requires the investment manager for the venture capital program to submit an annual report to WEDC and requires WEDC to submit two progress reports on the program to the Joint Committee on Finance. **Assembly Amendment 1** modifies the investment manager's reporting requirements as follows.

First, in addition to the annual reports required under the bill, the amendment requires the investment manager to submit quarterly reports to WEDC. The amendment requires that contracts with venture capital investment funds must require the funds to provide information necessary to complete the reports to the investment manager. The amendment also requires the quarterly reports to be made readily accessible to the public on WEDC's website. Under the amendment, the quarterly reports must include the following information:

- An identification of each venture capital fund under contract with the investment manager.
- An identification of each business in which a venture capital fund held an investment of moneys the venture capital fund received through the program, and a statement of the amount of the investment in each business that separately specifies the amount of capital designated through the program that were contributed to the investment.
- A statement of the number of employees the business employed when the venture capital fund first invested capital in the business that the venture capital fund received through the program and the number of employees the business employed at the end of the quarter.

Second, under the bill, the investment manager must submit its annual report to WEDC within 90 days after the end of the investment manager's fiscal year. Under the amendment, the investment manager must submit its annual report to WEDC within 120 days after the end of its fiscal year.

Third, the amendment adds an item to the list of information that must be included in the investment manager's annual report to WEDC. Specifically, under the amendment, the annual report must include each venture capital fund's internal rate of return on its investments through the program.

Finally, the amendment modifies an item that must be included in the investment manager's annual report to WEDC. Under the bill, for each business in which a venture capital fund held an investment through the program, the fund must report the internal rate of return realized by the venture capital fund on the investment in the business. Under the amendment, a venture capital fund must instead report on the internal rate of return realized by the venture capital fund upon the venture capital fund's exit from the investment in the business.

### **Assembly Amendment 3**

**The bill** directs WEDC to establish an economic development program for the investment of venture capital funds in Wisconsin businesses. **Assembly Amendment 3** prohibits WEDC from establishing the venture capital program until WEDC has adopted procurement policies and procedures that specify all of the following:

- When WEDC is required to publicly solicit proposals from multiple vendors.

- How WEDC will evaluate proposals from multiple vendors.
- How WEDC will assess potential conflicts of interest a vendor may have if the vendor sells goods or services to WEDC.

#### **Assembly Amendment 4**

*The bill* requires WEDC to submit its proposed contract with an investment manager to the Joint Committee on Finance for a limited-scope, 14-day passive review.

*Assembly Amendment 4* requires the proposed contract to be submitted to the Legislative Audit Bureau at the same time that it is submitted to the Joint Committee on Finance. Under the amendment, the Legislative Audit Bureau must review the proposed contract and submit a letter to the Joint Committee on Finance that evaluates the terms of the contract and offers an opinion concerning the extent to which the proposed contract terms conform to normal practices in the venture capital industry and the extent to which the contract implements the requirements specified under the bill.

#### **BILL HISTORY**

Assembly Amendment 1 to Assembly Bill 181 was offered on May 6, 2013 by Representatives Kuglitsch and Clark. Assembly Amendment 3 to the bill was offered by Representative Bernard Schaber on May 9, 2013. Assembly Amendment 4 was offered by Representative Clark on May 10, 2013.

On May 10, 2013, the Assembly Committee on Jobs, Economy, and Mining voted to recommend the adoption of Assembly Amendment 1 on a vote of Ayes, 13; Noes, 1; and Absent, 2. The committee voted to recommend the adoption of Assembly Amendment 3 on a vote of Ayes, 8; Noes, 6; and Absent, 2. The committee voted to recommend the adoption of Assembly Amendment 4 on a vote of Ayes, 14; Noes, 0; and Absent, 2. On the same day, the committee voted to recommend the passage of the bill, as amended, on a vote of Ayes, 8; Noes, 6; and Absent, 2.

Assembly Substitute Amendment 1 to Assembly Bill 181 was offered on May 29, 2013 by Representatives Kuglitsch and Clark. On June 6, 2013, the Assembly adopted Assembly Substitute Amendment 1 on a voice vote and passed Assembly Bill 181, as amended, on a vote of Ayes, 91; Noes, 2; Paired, 4.

Senate Amendment 1 to Assembly Bill 181 was offered on June 11, 2013 by Senator Gudex. On June 12, 2013, the Senate Committee on Economic Development and Local Government recommended adoption of Senate Amendment 1 and passage of the bill, as amended, on a vote of Ayes, 5; Noes, 0.

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